



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/934,356	08/21/2001	Dale E. Koop	CTC-401	7685

7590 08/09/2005

Twin Oaks Office Plaza
477 Ninth Avenue
Suite 112
San Mateo, CA 94402

EXAMINER

FARAH, AHMED M

ART UNIT	PAPER NUMBER
----------	--------------

3739

DATE MAILED: 08/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/934,356

Applicant(s)

KOOP, DALE E.

Examiner

Ahmed M Farah

Art Unit

3739

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 April 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3 and 6-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 6-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3 and 7-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yavitz et al. U.S. Patent No. 6,312,450 in view of Rodgers et al. U.S. Patent No. 6,455,501.

Yavitz et al. disclose a system and method for improving the texture and appearance of patient's skin, the method comprising the steps of: treating a subsurface layer of the skin with a source of energy sufficient to cause stimulation of collagen biosynthesis without thermal damage to the epidermis (see the abstract; col. 2, line 66 to col. 3, line 10; col. 4, lines 62-66; and col. 6, lines 3-5); and applying to the skin a light transport modifier, which in turn helps post treatment healing of tissue (see col. 5, lines 16-19). As to claim 3, Examiner notes that the method for periodic treatment over a given duration, such as days, weeks or months is well known in the medical art.

However, although Yavitz et al. emphasize the importance of shortened healing time, they do not particularly teach the use of a wound healing composition as claimed. Rodgers et al. teach an alternative skin treatment in which a wound healing composition is used. Thus, it would have been obvious to one skilled in the art at the time of the

applicant's invention to modify Yavitz et al. in view of Rodgers et al. and use a wound healing composition in order prevent infection and substantially reduce healing time of the tissue being treated.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Yavitz et al. in view of Rodgers et al. as applied to claims 1-3 and 7-11 above, and further in view of O'Donnell, Jr. U.S. Patent 6,106,514.

Neither Yavitz et al. nor Rodgers et al. teach the use of mechanical energy to provide the treatment. O'Donnell, Jr. discloses apparatus and method for treating subsurface layer of skin, the method comprising the steps of applying mechanical energy to tissue being treated. Hence, at the time of the applicant's invention, one skilled in the art would have used mechanical energy, in addition to the photonic energy, so as to enhance treatment of the skin.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ahmed M. Farah whose telephone number is (571) 272-4765. The examiner can normally be reached on Mon-Thur. 9:30 AM-7:30 PM, and 9:30 AM - 6:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eleni Mantis-Mercader can be reached on (571) 272-4740. The fax phone

Art Unit: 3739

number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

August 2, 2005.

Ahmed M Farah
Primary Examiner
Art Unit 3739

